

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL**NEW DELHI**Dated. 21st December, 2021**Cyber Appeal No. 3 of 2019**

State Bank of India

...Appellant

Versus

Ridit Raj Dutta & Anr.

...Respondents

BEFORE :**HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON****HON'BLE MR. SUBODH KUMAR GUPTA, MEMBER**

For Appellant

: Mr.S.L Gupta, Advocate.

Mr. Arjun Gupta, Advocate.

Mr. Aditya Vikram Gupta, Advocate.

For Respondents

: Ms. Praveena Gautam, Advocate

Mr. Pawan Shukla, Advocate

Mr. Jitesh P Gupta, Advocate

ORDER

By Subodh Kumar Gupta, Member - Heard Learned Counsel for the appellant and Learned Counsel for the respondents.

2. The present appeal is filed under section 57 of the Information Technology Act, 2000 against the order dated 11.01.2019 (impugned order) passed by the Adjudicating officer, Government of Assam, Guwahati in the complaint no. IT 61/2017/234 thereby ordering the Bank (SBI : State Bank of India, Appellant herein) to credit an amount of Rs.6,37,930.42 (with eligible interest amount as per the prevailing interest rate for the period) to the account of the respondent 2 (who is also father of the complainant before the Adjudicating officer) within 15 days of the impugned order. This amount has been withdrawn from the saving bank account of respondent 2 by more than 600 debits between 06.05.2017 to 28.06.2017 for making the payments to various e-commerce sites. The transactions from the account has been made by using the details of the ATM card and the secret PIN in the exclusive knowledge of the respondent. The respondent has questioned the transactions on the ground that he had not received any SMSs of the said transactions on his mobile phone.

3. The brief facts relevant for the present appeal are as under :

- On request of Respondent 2 (Mr. Jogannath Dutta), the appellant bank has issued ATM card to respondent 2, who has a saving bank account bearing no 10698221748 with the Golaghat branch of the appellant bank (SBI). It is said by the appellant that respondent 2 is a well educated person, a retired teacher, was using the ATM card since a long time.

- On 18.07.2017, respondent 2 complained to the concerned branch of the appellant bank that the transactions made in his account since 06.05.2017 with the use of ATM card are not made by him and these are illegal and unauthorised requesting the bank to replenish the funds in his account which have been illegally debited from his account. The passbook of respondent 2 was updated and he disowned more than 600 debits in his account between 06.05.2017 to

28.06.2017. Entries / debits disowned were those making the payments of purchases made from internet / e-commerce / on line sites.

- Complainant / respondent 1 (who is son of respondent 2) filed complaint dated 24.08.2017 with the Banking Ombudsman RBI Guwahati alleging that he along with his father (respondent 2) visited ATM booth on 18.07.2017 to withdraw cash but came to know that there is no balance in the account. On updating the passbook, respondent 2 found internet transactions for the purchase of articles from flipcart.com, amazon.com, moneymint.com, fastticket.com, nearby.com, reload.in, charge4u.in etc.

- Respondent 2 made cash withdrawal of Rs. 4000/-, Rs. 6000/- and Rs. 5000/- by using the ATM on 06.05.2017, 07.06.2017 and 19.06.2017 respectively. Respondent 2 alleges that withdrawal slip from ATM machine was not received. Further he alleges having not received the SMS alert for any of the questioned online transactions.

- The complainant (respondent herein) took up the matter with the appellant bank (appellant herein) and questioned more than 600 payments to various e-commerce sites from his account by using the debit card. The complainant also filed complaint with the Police.

- On 28.07.2017, the complainant filed complaint with the Adjudicating Officer under section 46 of the IT Act. The appellant Bank (Appellant) filed its reply with records of complaint and the decision of the Banking Ombudsman along with the logs of the payments. As per the Appellant bank, the Adjudicating Officer sent notices to e-commerce sites and received the replies but has not provided the copy of the same to the Appellant bank.

- On 15.12.2018, the appellant bank requested Adjudicating Officer to defer the Hearing by two weeks which was scheduled for 17.12.2018. Also appellant requested Adjudicating Officer to supply various letters filed by complainant (respondent herein) along with certified copies of replies received from on-line vendors and copy of report of investigation department. However Adjudicating officer passed the impugned order no IT61/2017/234 dated

11.01.2019 and is alleged to have not provided sufficient opportunities to the Appellant to defend itself. Hence the present appeal before the Tribunal.

4. After hearing the parties in detail and taking into consideration the defence of the Bank, (which is the appellant herein) and all the relevant documents, the Learned Adjudicating Officer, by the impugned order dated 11.01.2019 has allowed claim (as above) of the complainant who is the respondent herein. Admittedly nothing has been paid by the appellant bank (SBI) so far.

5. The contention of the appellant is that it has sent all the SMSs through its server to the mobile of the Account holder. Though so claimed by the appellant bank, however, a large number of SMSs were not received on the mobile of the account holder because of inadequate memory of the mobile as the account holder is alleged to be not deleting the old SMSs from his mobile. Further as submitted by the appellant bank that ATM machine also indicates the remaining balance left in the account after each transaction of cash withdrawal using the ATM card and the PIN. However the respondent/ complainant herein denies having received any printed slip after a few instances of cash withdrawal made by him at ATM machine using his ATM card and the PIN. The stand of appellant that ATM machine always gives the printed slip indicating the remaining balance left in the account after the withdrawal transaction is completed may not always be correct under all situations, for instance, the case where the ATM machine has enough cash to disburse but runs out of paper to print any slip indicating remaining balance left. Its important to note here that bulk of the above said transactions , which are unusually large in numbers (over 600 debit transactions) over a small period of time (06.05.2017 to 28.06.2017), have been made through largely e-commerce barring a few instances of cash withdrawal by respondent using his ATM card and PIN details.

6. Following are the gist of pertinent observations of significance made after hearing both the parties, going through the various documents, records and the impugned order dated 11.01.2019 passed by the Learned AO (Adjudicating Officer) :

(I) The respondent/SBI Account holder is a retired Head master of a local high school and is getting his pension credit in his SB account 106xxxx1748. He uses his debit card for ATM

transactions and has never conducted any POS or internet banking transactions. As per respondent, he tried to withdraw cash from the SBI Golaghat main branch ATM on 18.07.2017 which was rejected by the ATM stating insufficient funds. Thereafter he visited the SBI Golaghat branch to enquire about it. SBI officials in the branch asked him to update the passbook of his account. Upon updating, it had come to the notice that money in his account were siphoned off by means of fraudulent transactions. He had brought the same to the knowledge of the bank officials. It was also brought to the notice of the account holder that a further debit of Rs.1,14,500/- to be done as the fraudster did transaction beyond the available limit. Upon the account holder's complaint that he did not avail any over draft facility, the bank blocked the account upon his complaint. For proper investigation of the matter, an FIR no 470/17 was lodged u/s 379, 420 of IPC dated 18.07.2017 at Golaghat Police station. The account holder also filed complaint with the Banking Ombudsman (BO) on 25.08.2017 who held a conciliation meeting on 30.10.2017 and advised the account holder to go to higher authority as the matter required detailed investigation beyond the purview of BO. The account holder filed complaint with the Adjudicating Officer u/s 46 of the IT Act-2000 on 28.07.2017.

As evident from the materials on record, Adjudicating Officer gave sufficient opportunities and time in sync with Principles of Natural justice and reasonable opportunity to all the concerned stakeholders including the account holder, the Appellant bank SBI and Police officials investigating the case to present their cases and heard them in person several times examining all the papers made available by different stakeholders. Detailed hearings were held giving equal and adequate opportunities to present and defend their case. Its important to note that the Adjudicating Officer issued notice to the appellant bank SBI Golaghat branch for submitting their replies which was duly submitted through written statements on 10.10.2017. Adjudicating Officer also issued notice to all the e-companies involved and they had submitted their reports. He conducted several rounds of hearings on the case dated 18.09.2017, 18.01.2018, 05.03.2018, 08.08.2018, 26.10.2018, 05.11.2018, 12.12.2018 and 26.12.2018 respectively wherein representatives of the appellant bank SBI, account holder (respondent) and Police officials from Golaghat district were present as and when required. On 16.03.2018, the AO sent a letter to ADGP, CID HQ, Assam Police to investigate the case. The investigation report was submitted by SP Golaghat of Assam Police on 17.04.2018. which states that 'Unknown miscreants withdrew

the amount without the knowledge of account holder and could not find any clue'. The report was duly examined by the AO and it found that Police have not carried out cyber forensic type of investigation or other available details which could have given more insights into such kinds of cyber crime. The AO also examined the report submitted by the appellant bank which included SMS logs of POS transactions (06.05.2017 to 08.05.2017) and ATM transactions (01.06.2017 to 26.06.2017). SBI in their report stated that for transactions upto Rs.2000/- carried out through PayU and Bill Desk PG does not require OTP for authentication and as per their report over 600 such transactions of values less than Rs. 2000/- were transacted. SBI also alleged the account holder sharing ATM card information with 3rd party (which the account holder denied). The important question that 'why the SBI technology platform could not identify / detect unusual transaction patterns to alert the account holder or confirm if these transactions are being done by him' continue to remain unanswered yet. Therefore deficiency / negligence on the part of Appellant bank cannot be ruled out.

While examining SMS logs, AO found that POS and ATM transactions were though sent to the RMN (Registered Mobile Number) of the account holder but were not delivered being shown as expired in the server log report of the appellant bank SBI. This clearly suggests that the account holder didn't receive the SMS of the transactions done by himself on ATM and the POS type of transactions carried out by fraudster during the said period.

As alleged by the Appellant bank that respondent might have compromised his authentication credentials such as ATM PIN, card number, DoB (phone phishing or other type of cyber attack). However, any such transactions using other method such as POS and Internet banking requires permission / enabling of services etc with the intervention of bank officials / customer care section of the bank but the bank has not furnished any such information regarding facilitating the respondent with net banking facility in his account.

(ii) As per cl. 5 of the RBI guidelines no : RBI/2017-18, dated 06.07.2017, the SMS alerts shall mandatorily be sent to the customers to the account holder's RMN (Registered Mobile Number). It is observed that SMS alerts of the fraud transactions were not delivered to the RMN of the respondent thus he had no means of knowing the ongoing transactions. The banking system

after observing so many unscrupulous transactions should have been able to alert the customers or could have stopped transaction in the account after few numbers of continuous transactions which were unusual in nature by informing the account holder about its authenticity through available channels. In case of net banking system for wrong use of credentials for logging into internet bank account for consecutively for three times, the system automatically disables the account for 24 hrs and activate the account only after accurate details can be provided by the customer.

(iii) Based on the log report submitted by the appellant bank, it was evident that bank was aware of non delivery of SMS of transaction details to the designated mobile of the account holder. It would have been prudent on the part of the bank to inform the account holder about the non delivery of SMS continuously during the period when such unusual fraud transactions were happening. The negligence on the part of the bank to inform the account holder and lack of assessment capability of financial frauds happening in his account over the period are major deficiency of the banking system of SBI, which contributed towards these fraudulent transactions.

(iv) It has been observed that all the debt-fraud transactions was conducted by outsiders or third party using various e-commerce / payment gateway websites such as flipkart.com, amazon.com, moneymint.com, fastticket.com, nearbuy.com, charge4u.in etc. In this case, the account holder should have absolutely no liability in circumstances where the bogus / unauthorised transaction occurs because of the carelessness of the banking system, which is a clear indication of contributory negligence of the banking system for this fraud to happen.

(v) Further there is a debit of an amount of Rs.1,14,500/- by the SBI, Golaghat by way of providing overdraft facility in the respondent account as the fraudster carried transactions beyond the available balance saving amount, whereas the respondent did not avail any facility of overdraft or cash credit limit in his saving account . It indicates that fraudster activated such overdraft or cash credit limit on this account and carried transactions. The inability of bank to prevent the transactions to the tune of another Rs.1,14,500/- by the fraudster when the respondent saving account was exhausted appears to be case of possible contributory fraud / negligence.

We, find no good reason to deviate from the impugned order passed by Learned Adjudicating Officer, there is no infirmity or illegality in the impugned order warranting our interference thus the said Cyber appeal is disposed of without any modification in the impugned order. If the payments so due in favour of the account holder (respondent) are not made within 21 days, the respondent shall approach the Learned Adjudicating Officer and seek execution of the judgement and order passed in its favour. Such applications, if filed, shall be disposed of expeditiously and in accordance with Law.

The appeal is disposed of in the aforesaid terms.



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(S.K. Singh, J)

Chairperson

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(Subodh Kumar Gupta)

Member